FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR.

Writ Petition No. 136 of 2007

(Mangala Sahadeorao Kale **VERSUS** Nana Yashwant Lakhadive**)**

Appeal — District :
Application No. — of 200
Writ petition

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's Orders

Shri Kashid, counsel for the petitioner.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 22nd November, 2007.

Heard Shri Kashid, the learned counsel for the petitioner.

By this petition, the petitioner impugnes the order passed by the Civil Judge (Junior Division), Akola on 15.07.2006 below Exh.25 and Exh.29. The petitioner is the original plaintiff. A suit was filed by the plaintiff against the defendant for recovery of amount of Rs. 75,400/-. The defendant denied the claim of the plaintiff. The issues were framed by the trial Court and the Power of Attorney holder for plaintiff had tendered evidence on affidavit. It appears that though the matter was posted before the Court from time to time for cross-examination of the Power of Attorney holder for the plaintiff from 07.01.2005, the witness was not available for cross-

examination till 17.11.2005. When the matter was listed before the trial Court on17.11.2005 for cross-examination, the witness again remained absent. So also, the advocate for the plaintiff also did not remain present before the Court. The Court, therefore, passed the order of “No Cross” on 17.11.2005. After the order of “No Cross” was passed by the trial Court on 17.11.2005, the counsel for the plaintiff filed an application at Exh.24 for time to take necessary steps but, the trial Court rejected the said application on 08.12.2005. The counsel for the plaintiff then filed one more application at Exh.25 for recalling or setting aside the order of “No Cross” which was passed by the Court on 17.11.2005. The counsel for the plaintiff also filed yet another application at Exh.26 on 08.12.2005 itself for grant of time to submit the affidavit of the plaintiff. On 12.01.2006, the counsel for the plaintiff, did not press both the applications at Exh.25 and Exh.26. This was done by the counsel in writing, and therefore, the trial Court passed the order on 12.01.2006 on both the applications and disposed them of as “Not Pressed”. Both the applications at Exh.25 and Exh.26 were disposed of on 12.01.2006 as “Not Pressed”. On 12.01.2006, the counsel for the plaintiff filed yet

another application for permission to lead evidence by setting aside the order of “No Cross” dated 17.11.2005. This was marked as Exh.28. While this application was pending before the Court on 15.04.2006, the plaintiff filed an application at Exh.29 for recalling the order dated 17.11.2005 passed below Exh.22 and again prayed for setting aside the order of “No Cross”. The trial Court rejected the applications below Exh.29 and Exh.25 by the impugned order dated 15.07.2006. The order dated 15.07.2006 is challenged in the instant petition.

It is necessary to note that the plaintiff had filed applications seeking almost identical relief at Exh.25 and Exh.28 and both these applications were “Not Pressed” by the counsel for the plaintiff in writing. It is not stated in any of the applications filed by the plaintiff as to why the counsel for the plaintiff did not press the applications at Exh.25 and Exh.28 where similar relief which is sought by an application, Exh.29, was sought. In the instant writ petition also, the plaintiff has merely challenged the orders passed below Exhs.25 and 29. In fact Exh.25 was not pressed by the counsel for the plaintiff in writing and it is not the case of the plaintiff in the subsequent applications that Shri Kadam, the learned counsel for

the plaintiff had mistakenly endorsed that the applications were “Not Pressed”.

In the backdrop of the aforesaid facts, the trial Court was justified in rejecting the applications at Exh.25 and Exh.29 by the impugned order dated 15.07.2006. The trial Court rightly held that the application Exh.29 was not maintainable in view of the fact that the application Exh.25 seeking similar relief was not pressed by the counsel for the plaintiff. By relying on the decision reported in **AIR 2005 SC 446**, it is rightly pointed out on behalf of the respondent that the principle of *Res Judicata* and the applicability thereof is not limited by the specific words of Section 11 and the said principle is also applicable to two stages in the same litigation. Even otherwise, the petitioner has not afforded any reason for not pressing the earlier applications. It appears from the record that almost half a dozen applications were filed by the plaintiff seeking a similar relief and most of them were not pressed by the counsel for the plaintiff and all of them were either not prosecuted by the counsel for the plaintiff or were dismissed. In the peculiar facts of the case, it cannot be said that Civil Judge (Junior Division), Akola committed any error in passing the impugned order

dated 15.07.2006. For the reasons aforesaid, the petition fails and is dismissed with no order as to costs.

JUDGE

APTE